parents from the point of view of the welfare of the infant. The learned judge, however, tilted the balance in favour of the foster parents in these respects and went on to rely on two specific grounds why he held that the natural parents withheld consent unreasonably.

The first is the de facto adoption as evidenced by the temple ceremony. The learned judge conceded that the natural parents had the right to change their minds but it is obvious from his evaluation of the evidence that the natural parents truly intended to give the infant away in adoption and should not now be permitted to change their minds. He made reference to s 8, which is a provision as to existing de facto adoptions, and said that if the infant had commenced his primary education, he would have had no hesitation in making an order for adoption by virtue thereof. We think s 8 has been misconceived in this instance. That section only applies to de facto adoptions *before* the commencement of the Act on 25 June 1953 and obviously does not apply here where the so-called de facto adoption only commenced on 11 November 1983. It will defeat the object of the legislature that all adoptions shall be in accordance with the Act if the courts were to recognize de facto adoptions as a ground for dispensing with parental consent.

Secondly, the learned judge held that:

> ... the disruptive effect on the body of transplanting him from his familiar surroundings where he has lived for nearly four and a half years to his natural parents, would be sufficiently permanent and serious to afford cogent reasons for holding that the consent of the natural parents to his adoption was being unreasonable withheld ...

He considered the reported cases where it was held that a year old baby would not be upset by such a change: *Re PA (An Infant)*[1] but a three year old would: *O'Connor* v *A and B*.[2] We would first observe that the natural parents asked for the return of the infant when he was two years old. The court had ordered an early hearing but the actual hearing did not take place until 28 April 1988. The delay is not the fault of the natural parents and we think they should not be disadvantaged because of this. In any event, in *O'Connor*'s case,[2] the reason for holding that withholding of consent was unreasonable was because the natural parents were not particularly stable individuals. Here the natural father did not lose touch with the infant. The natural mother visited him when he was in the welfare home by order of the court before the hearing and the infant was 'not frightened or felt uncomfortable with her'. We are of the view that a change of surroundings will not be disruptive in the instant case. After all, the infant is being taken back by his natural parents and is to be brought up together with his twin sister.

In all the circumstances of this case, we were of the view that the natural parents' withholding of consent is not unreasonable. We accordingly allowed the appeal with costs and set aside the order of the learned judge, and ordered the infant to be returned to the natural parents (the appellants) with access to the foster parents (the respondents) under the supervision of the welfare officer.

Appeal allowed.

Solicitors: *Yahaya & Teja; BT Lee & Co.*

Reported by *Prof Ahmad Ibrahim*

Tan Sri Haji Muhyuddin bin Haji Mohd Yassin & Anor v Dollah bin Haji Salleh

SUPREME COURT (KUALA LUMPUR) - CIVIL APPEAL NO 479 OF 1968
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND AJAIB SINGH SCJJ
11 OCTOBER 1989

Administrative Law - Declaration - Application for - Disciplinary proceedings by state football association against football player - Decision to impose ban on playing at national and state level - Whether ban imposed was ultra vires the constitution of state football association - Whether domestic remedies exhausted - Whether state football association had power to extend ban beyond territorial jurisdiction

Sports Law - State football association - Disciplinary proceedings - Imposition of ban - Territorial jurisdiction

The respondent was a football player playing for the Johore Football Association ('JFA') for the state of Johore from 1982 to 1987. JFA was also a member of the Football Association of Malaysia ('FAM'). By an order issued by JFA as a disciplinary action, a ban was imposed on the respondent from playing football at national or state level. The respondent appealed to the JFA. As a result, the ban was reduced in period effective from 18 July 1988 to 31 December 1988 and the respondent was only allowed to play for the national team, if selected, and for his new employer. It appeared that the FAM had sent a letter to urge member associations to abide by the ruling of the JFA. The respondent sought a declaration that the ban imposed was ultra vires the constitution of the JFA.

The learned trial judge granted the declaration and the appellants appealed. [See [1989] 1 MLJ 311.] It was argued on appeal that (a) that the respondent had not exhausted his domestic remedies as he had not appealed to the FAM; and (b) that in view of the letter from the FAM to all its member associations this case was distinguishable from *Haji Osman bin Haji Aroff & Anor* v *Abdul Karim bin Pin*.[1]

Held, dismissing the appeal:

(1) The respondent's basic allegation was the lack of jurisdiction on the part of the JFA to extend its order beyond the boundary of the state which was a defined area of its jurisdiction. It is in the discretion of the court to grant or not to grant the declaration. Under the circumstances, the respondent should not be denied access to the court even if he had not exhausted his domestic remedy.

(2) In this case, territorial jurisdiction is so fundamental that it will be a serious question for the JFA (as well as the FAM)

to decide whether to extend the territorial jurisdiction of the state association beyond the area of the state concerned. Such a decision will have serious repercussions and will affect other state associations who may not agree to it. From the language of art 7(c) of the constitution of the FAM, it is quite clear that the prior consent of the council should be obtained before extending the jurisdiction.

Case referred to

1 *Haji Osman bin Haji Aroff & Anor* v *Abdul Karim bin Pin* [1988] 1 MLJ 425 (folld)

Appeal from: Originating summons No 31-706 of 1988 (High Court, Johore Bahru).

Haji Mohd Faidz bin Darus (*Haji Hassan bin Ibrahim* and *Ibrahim bin Hashim* with him) for the appellants.

Mohamad Ibrahim (*Vincent Chandran* with him) for the respondent.

Cur Adv Vult

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): The respondent, Dollah bin Haji Salleh, was a football player playing for the Johore Football Association ('JFA') for the state of Johore from 1982 to 1987. At all material times, the JFA was a member of the Football Association of Malaysia ('FAM'). By an order issued by the JFA on 19 July 1988, as a disciplinary action, a ban was imposed on the respondent from playing football at national or state level. He was also banned from holding any office in any team or any football association for a period of three years effective from that date.

On 28 July 1988, the respondent appealed to the JFA. On the same date, he also filed a writ in the High Court against the appellants which writ he subsequently withdrew on 8 August 1988. His appeal was heard by the JFA on 15 August 1988 whereupon the ban was reduced in period, effective from 18 July 1988 to 31 December 1988 and the respondent was only allowed to play for the national team, if selected, and for his new employer.

The originating summons which resulted in the present appeal was filed on 17 August 1988. The respondent sought a declaration that the ban imposed on him was ultra vires the constitution of the JFA.

Two points were raised in the appeal. First, whether the respondent had exhausted all his domestic remedies before coming to court. The learned judge held that he had. The appellants argued that he had not. According to Encik Faidz for the appellants, in considering the constitution of the JFA, the constitution of the FAM should also be considered. In the context of domestic remedy available to the respondent, art 49 and art 53 of the FAM must be considered. Article 49 of the constitution of the FAM purports to confer power of discipline to member associations subject to appeal under art 53 to be filed with the council of FAM and which cannot be withdrawn except with leave of the council. Article 53 also stipulates that no appeal shall be entertained if the constitution of the member association provides that their decision is final.

It was argued on behalf of the appellants that although the constitution of the JFA does not provide for the appeal by the respondent, he was nevertheless required to appeal to the FAM and this he must do before it could be said he had exhausted all his domestic remedies.

The answer of the learned judge to this question was as stated in his judgment [see [1989] 1 MLJ 311] in that as there was no contractual relationship between the respondent and the FAM, the respondent was only bound by the constitution by the JFA. In other words the respondent could not be held to be legally obliged to appeal to the FAM in order to exhaust his domestic remedy.

That may well be a valid argument but we should consider a more basic issue here. The respondent had come to the court to ask for a declaration. The respondent's basic allegation was lack of jurisdiction on the part of the JFA to extend its order beyond the boundary of the state which was a 'defined area' of its jurisdiction. It is in the discretion of the court to grant or not to grant the declaration. Under the circumstances, the respondent should not be denied access to the court even if he had not exhausted his domestic remedy.

The second point raised in the appeal was whether this case could be distinguishable from *Haji Osman bin Haji Aroff & Anor* v *Abdul Karim bin Pin*.[1] The Supreme Court in that case referred to art 7(c) of the constitution of the FAM and held that the jurisdiction of the Kedah Football Association was confined to the state of Kedah only. Part of art 7(c) reads as follows:

> Each State Association shall cover a defined area and shall neither extend nor alter such area without having obtained the consent of the Council.

Under that article, it is clear that the area of jurisdiction of a state football association can only be extended with the consent of the council of the FAM.

In this case, the order against the respondent was made on 16 August 1988. However, there was a letter dated 18 August 1988 from the FAM to urge member associations to abide by the ruling of the JFA. This letter of the FAM, it was argued, made the case distinguishable from the case of *Osman Aroff*.[1]

We disagreed. In our view, territorial jurisdiction is so fundamental that it would be a serious question for the JFA (as well as the FAM) to decide whether to extend the territorial jurisdiction of the state association beyond the area of the state concerned - 'the defined area'. Such a decision will have serious repercussions and will affect other state associations who may not agree to it.

From the language of art 7(c) of the constitution of the FAM, it is quite clear that the prior consent of the council should be obtained before extending the jurisdiction.

In this case, when the order in issue was made on 16 August 1988, the order was valid only for the state of Johor.

The appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Hassan Ibrahim & Co; Mohamad Ibrahim & Co.*

Reported by *Prof Ahmad Ibrahim*

Public Prosecutor v Eyan a/l Endin Pan

HIGH COURT (KANGAR) - CRIMINAL TRIAL NO 23 OF 1984
KC VOHRAH J
29 AUGUST 1989

Criminal Law - Dangerous drugs - Trafficking in - Whether contents in sack seized were 'raw opium' within the definition in the Dangerous Drugs Act 1952 - Possession by accused of sacks proved - Presumption of accused's knowledge of contents of sack raised - Whether presumption was rebutted by accused - Dangerous Drugs Act 1952, ss 2, 37(d), 39B(1)(a) & 39B(2)

The accused was charged on two counts of trafficking in dangerous drugs in 1984, to wit, 19.864kg of raw opium and 1,129g of morphine respectively and that the accused had thereby committed two offences under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act'), punishable under s 39B(2) of the Act. The case for the prosecution was that at the date and time and place specified in each of the two charges, the accused was seen walking ahead of another person along a bund between dry padi fields and was seen carrying a sack on his right shoulder. Upon the police coming out of their ambush position and identifying themselves, the accused dropped the sack and ran across the padi fields. The accused was subsequently caught and arrested and brought to the place where he had dropped the sack. The sack was found to contain 11 packages. One package was found to contain, upon analysis by a government chemist, 1,129g of morphine, and this formed the subject matter of the second charge. The other ten packages contained a black substance which was, on analysis by the same government chemist, found to be 19.864kg of 'raw opium' within its definition in s 2 of the Act, and this was the subject matter of the first charge. There was a dispute as to whether the contents of the sack were 'raw opium' within the meaning of its definition before its amendment in 1984. The government chemist concluded from his analysis data that the opium in the ten packages was raw opium as specified in s 2 before its amendment in 1984. The accused, in defence, denied the facts alleged by the prosecution on several aspects but did not dispute the prosecution's case that he was, together with another person, walking on a bund and that both were carrying sacks, one each, and that he dropped the sack and ran. The accused claimed that he did not, at any time, realize what the sack he was carrying contained.

Held, convicting the accused of both charges:

(1) Having gone through the government chemist's expert opinion and the article on a Japanese study 'Studies of Poppies and Opium' published in a United Nations Publication, *Bulletin of Narcotics*, April-June 1957 pp 20-33 that the chemist relied upon, the chemist's conclusion that the raw opium forming the subject matter of the first charge fell within its definition in s 2 of the Act prior to the 1984 amendment was to be accepted.

(2) At the close of the case of the prosecution, there were primary facts not inherently incredible which showed that the accused was in possession of a sack containing 11 packages. The presumption was, under s 37(d) of the Act, that since he was in possession of the sack containing the drugs, he knew the nature of the drugs in the sack, ie that he knew the raw opium in the sack was raw opium and that he knew that the morphine in the sack was morphine. And the raw opium and the morphine being in excess of the amounts presumptive of trafficking under sub-ss (da)(v) and (ii) of s 37 of the Act, the accused is presumed to have trafficked in raw opium and morphine respectively. Therefore, on a prima facie basis, the two charges were made out.

(3) There was no reasonable doubt created on the prosecution's case that the accused was seen together with another person carrying a sack each on the shoulder, and that both dropped the sacks and ran and the accused was arrested after a chase through some padi fields, and that the sack that he was carrying was the sack adduced in evidence before the court and that the sack contained raw opium and morphine. The accused was thus in possession of the sack and its contents.

(4) Considering the testimony of the accused in the totality of the evidence adduced, including the fact that the accused carried the sack in the dead of night and that he dropped the incriminating sack and ran when the police identified themselves, the presumption that he knew that the raw opium in the sack was raw opium and that he also knew that the morphine in the sacks was morphine had not been rebutted on the balance of probability.

(5) Further, the presumption that the accused was trafficking in the raw opium and the morphine as specified in the first and second charges respectively had not been rebutted on the balance of probability.

Legislation referred to
Dangerous Drugs Act 1952 ss 2, 37(d), 39B(1)(a), 39B(2)

Ahmad bin Maarof (Deputy Public Prosecutor) for the Public Prosecutor.
TS Marbeck for the accused.

Cur Adv Vult

KC Vohrah J: The accused faced two charges thus:

First Amended Charge

That you on 9 January 1984 at about 3am at Kampung Belukar Lengas, Chuping, in the district of Kangar in the State of Perlis, did traffic in dangerous drugs, to wit, 19.864kg of raw opium and that you have thereby committed an offence under s 39B(1)(a) of the Dangerous Drugs Act 1952, punishable under s 39B(2) of the same Act.

Second Amended Charge

That you on the 9 January 1984 at about 3am, at Kampung Belukar Lengas, Chuping, in the District of Kangar in the